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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1238

RIN 2590-AA74

Stress Testing of Regulated Entities

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is adopting a final rule amending its stress testing rule adopted in 2013 to implement section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. FHFA received no comments to its proposed amendments, published for comment in an August 21, 2015 Notice of Proposed Rule. These amendments adopt the proposed amendments without change to modify: the start date of the stress test cycles from October 1 of a calendar year to January 1 of the following calendar year; the dates for FHFA to issue scenarios for the upcoming cycle; the dates for the regulated entities to report the results of their stress tests to FHFA; and the dates for the regulated entities to publicly disclose a summary of their stress test results for the severely adverse scenario. These amendments align FHFA's rule with rules adopted by other financial institution regulators that implement the Dodd-Frank stress testing requirements.

DATES: Effective January 1, 2016.

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SUPPLEMENTARY INFORMATION:

I. Background

FHFA is an independent agency of the federal government established to regulate and oversee the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), and the Federal Home Loan Banks (Bank(s)) (collectively, the regulated entities).¹ FHFA is the primary federal financial regulator of each regulated entity. FHFA's regulatory mission is to ensure, among other things, that each of the regulated entities "operates in a safe and sound manner" and that their "operations and activities . . . foster liquid, efficient, competitive, and resilient national housing finance markets."²

On September 26, 2013, FHFA published a final rule implementing section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),³ which requires certain financial companies with total consolidated assets of

¹ Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Housing and Economic Recovery Act of 2008, 12 U.S.C. 4501, et seq.

² 12 U.S.C. 4513(a)(1)(B).

³ 78 FR 59219 (September 26, 2013).

more than \$10 billion to conduct annual stress tests to determine whether the companies have the capital necessary to absorb losses as a result of adverse economic conditions. Each regulated entity is covered by this Dodd-Frank Act requirement. FHFA's regulation, located at 12 CFR Part 1238, requires each regulated entity to conduct an annual stress test based on scenarios provided by FHFA and consistent with FHFA prescribed methodologies and practices. The rule requires the annual stress test period to begin October 1 of one year and end September 30 of the next year, which coincided with the testing period established by Federal Reserve Board (FRB) regulations for its Dodd-Frank Act stress testing.

FHFA's regulation also requires that the Agency issue to the regulated entities stress test scenarios that are generally consistent with and comparable to those developed by the FRB not later than 15 days after the FRB publishes its scenarios.⁴ Each regulated entity is required to report the stress test results to FHFA and the FRB and publicly disclose a summary of the stress test results for the severely adverse scenario. The reporting date for the Enterprises is on or before February 5, and for the Banks it is on or before April 30.⁵ The date for each Enterprise to publicly disclose its results from the severely adverse scenario of the stress test is the period between April 15 and April 30.⁶ The Banks are required to disclose their summaries between July 15 and July 30.⁷ Maintaining consistency with the FRB testing rules, these dates were established by measuring forward from the corresponding dates in the FRB regulation, after accounting

⁴ 12 CFR 1238.3(b).

⁵ 12 CFR 1238.5(a).

⁶ 12 CFR 1238.7(a).

⁷ 12 CFR 1238.7(a).

for differences in the business models of the regulated entities from those of the institutions regulated by the FRB.

On October 27, 2014, the FRB published a final rule amending several dates relevant to its rule and from which FHFA measured to determine appropriate dates for stress testing cycles, scenario issuance, test reporting, and summary test disclosures.⁸ The effect of the rule change shifts the date for scenario issuance by approximately three months. The FRB's new rule establishes January 1 of each year as the beginning of the stress testing cycle (changed from October 1) and the following December 31 as the date as of which the regulated entity is to identify and use data for testing.⁹ The new FRB rule requires large bank holding companies with \$50 billion or more in total consolidated assets to report their test results not later than April 5¹⁰ and publicly disclose their summary results by mid-July.¹¹ The new FRB rule also requires U.S. banking institutions with total consolidated assets over \$10 billion and less than \$50 billion to report their test results by July 31 and publicly disclose their results during the period beginning October 15 and ending October 31.¹² Since FHFA measured several of its regulatory dates from corresponding dates in the FRB regulation, FHFA is amending its regulation to maintain consistency and comparability in stress testing regimes.

The final rule realigns FHFA's stress testing rule with those of the FRB, Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) by modifying: (1) the start date of the stress test cycles from October 1 of a

⁸ 79 FR 64025 (October 27, 2014), codified at 12 CFR part 252.

⁹ 12 CFR 252.12(t)(2), See 79 FR at 64046.

¹⁰ 12 CFR 252.57(a)(1), See 79 FR at 64054.

¹¹ 12 CFR 252.58(a)(1)(i), requires companies to publicly disclose a summary of the stress test results within 15 calendar days after the FRB discloses the results of its supervisory stress test. The FRB will publicly disclose a summary of the supervisory stress test results by June 30 pursuant to 12 CFR 252.46(b)(1). See 79 FR at 64054.

¹² 12 CFR 252.17(a)(3)(iii), See 79 FR at 64049.

calendar year to January 1 of the following calendar year; (2) the dates regulated entities are required to report stress test results to FHFA and the FRB; (3) the dates by which the regulated entities are required to publicly disclose summaries of the results for the severely adverse scenario; and (4) the date by which FHFA is required to issue stress testing scenarios to its regulated entities.

As a result of FHFA's experience through two stress test cycles, these amendments also lengthen the time between FRB's issuance of its scenarios and FHFA's issuance. The original rule's 15 day period after FRB's issuance has proven to be too short to allow appropriate analysis, stakeholder input, and adjustment of the scenarios to account for the differences in business models between the Enterprises and Banks as compared with other regulated institutions conducting Dodd-Frank stress tests under their regulators' rules. Consequently, FHFA is extending the time by which it is required to issue its scenarios to 30 calendar days following FRB's issuance of its final element of the supervisory scenarios.

II. Discussion of Public Comments

On August 21, 2015, FHFA published in the Federal Register proposed amendments to the Dodd-Frank stress testing requirements for the regulated entities. The comment period closed on September 21, 2015. FHFA did not receive any comments. Therefore, FHFA is adopting as its final rule the same rule proposed on August 21, 2015, without any change.

III. Summary of the Final Rule

Annual stress test - § 1238.3

Section 1238.3 of the rule changes the “as of” date for the data used for stress testing from September 30 of that calendar year to December 31 of the previous calendar year. As a result of the shift, the stress test cycles would begin on January 1, based on data as of December 31 of the preceding calendar year. This cycle matches the cycle recently adopted by the other Dodd-Frank stress testing regulators.

Section 1238.3(b) lengthens the amount of time by which FHFA commits to providing a description of the baseline, adverse, and severely adverse scenarios to all regulated entities from within 15 calendar days to within 30 calendar days after the FRB publishes its scenarios. This will provide additional time for FHFA to analyze and adjust the scenarios it issues to the Enterprises and Banks.

Required report to FHFA and the FRB of stress test results and related information - § 1238.5

Section 1238.5 changes the date by which stress test results are required to be reported to the FRB and FHFA. Instead of February 5 of each year, reports are required on or before May 20 for the Enterprises. Instead of April 30 of each year, reports are required on or before August 31 for the Banks. These changes reflect the shift in the stress test cycle and corresponding reporting dates adopted by the FRB and other regulators.

Publication of Results by Regulated Entities - § 1238.7

Section 1238.7 specifies a two week period within which the mandatory publication of a summary of the stress test results for the severely adverse scenario must occur. Instead of requiring publication between April 15 and April 30, the Enterprises must publish between August 1 and August 15 of each year. Instead of requiring

publication between July 15 and July 30, the Banks must publish between November 15 and November 30 of each year. These changes reflect the shift in the stress test cycle and corresponding publication dates adopted by the FRB and other regulators.

IV. Coordination with the FRB and the Federal Insurance Office

In accordance with section 165(i)(2)(C) of the Dodd-Frank Act, (12 U.S.C. 5365(i)(2)(C)), FHFA has coordinated with both the FRB and the Federal Insurance Office (FIO). On October 27, 2014, the FRB published a final rule covering “bank holding compan[ies] with total consolidated assets of greater than \$10 billion but less than \$50 billion and savings and loan holding companies and state member banks with total consolidated assets of greater than \$10 billion,”¹³ and large bank holding companies and non-bank financial companies, also known as “covered companies”¹⁴; the FDIC issued its final rule on November 21, 2014,¹⁵ and the OCC issued its final rule on December 3, 2014.¹⁶ Although FHFA’s final rule would not be identical to those of the FRB, the FDIC, and the OCC, it is consistent and comparable with them.

V. Differences Between the Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act requires the Director to consider the differences between the Banks and the Enterprises whenever promulgating regulations that affect the Banks. In developing the amendments to this rule, FHFA considered the differences between the Banks and the Enterprises, but also adhered to the statutory mandate that the regulation be “consistent and comparable” with the regulations

¹³ 12 CFR part 252, Subpart B, See 79 FR at 64045.

¹⁴ 12 CFR part 252, Subpart F, See 79 FR at 64051.

¹⁵ 79 FR 69365 (November 21, 2014), codified at 12 CFR part 325.

¹⁶ 79 FR 71630 (December 3, 2014), codified at 12 CFR part 46.

of the other agencies. In implementing the regulation, FHFA will define scenarios for the regulated entities, bearing in mind the key risk exposures at each regulated entity.

In the final rule, FHFA requires different timeframes for reporting stress test results for the Enterprises versus the Banks. For the Enterprises, FHFA sets the dates for reporting stress test results to the regulator, the FRB, and the public in proximity to similar dates in the other agencies' rules for institutions with over \$50 billion in assets. Reporting dates for all the Banks, regardless of size, are set in proximity to similar dates for institutions with less than \$50 billion in assets. As a result, the Banks have over three additional months to report results to FHFA, the FRB, and the public.

VI. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

VII. Regulatory Flexibility Act

The final rule applies only to the regulated entities, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (see 5 U.S.C. 601(6)). Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the General Counsel of FHFA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 1238

Administrative practice and procedure, Capital, Federal Home Loan Banks, Government-sponsored enterprises, Regulated entities, Reporting and recordkeeping requirements, Stress test.

Authority and Issuance

For the reasons stated in the preamble, and under the authority of 12 U.S.C. 4513, 4526, and 5365(i), FHFA amends part 1238 of title 12 of the Code of Federal Regulations as follows:

PART 1238 — STRESS TESTING OF REGULATED ENTITIES

1. The authority citation for part 1238 continues to read as follows:

Authority: 12 U.S.C. 5365(i); 12 U.S.C. 4513, 4526, 4612; and 12 U.S.C. 1426.

2. Amend § 1238.3 by revising paragraphs (a)(1) and (b) to read as follows:

§ 1238.3 Annual stress test.

(a) * * *

(1) Shall complete an annual stress test of itself based on its data as of December 31 of the preceding calendar year;

* * * * *

(b) Scenarios provided by FHFA. In conducting its annual stress tests under this section, each regulated entity must use scenarios provided by FHFA, which shall be generally consistent with and comparable to those established by the FRB, that reflect a minimum of three sets of economic and financial conditions, including a baseline, adverse, and severely adverse scenario. Not later than 30 days after the FRB publishes its scenarios, FHFA will issue to all regulated entities a description of the baseline, adverse, and severely adverse scenarios that each regulated entity shall use to conduct its annual stress tests under this part.

3. Amend § 1238.5 by revising paragraph (a) to read as follows:

§ 1238.5 Required report to FHFA and the FRB of stress test results and related information.

(a) Report required for stress tests. On or before May 20 of each year, the Enterprises must report the results of the stress tests required under § 1238.3 to FHFA, and to the FRB, in accordance with paragraph (b) of this section; and on or before August 31 of each year, the Banks must report the results of the stress tests required under § 1238.3 to FHFA, and to the FRB, in accordance with paragraph (b) of this section;

* * * * *

4. Amend § 1238.7 by revising paragraph (a) to read as follows:

§ 1238.7 Publication of results by regulated entities.

(a) Public disclosure of results required for stress tests of regulated entities. The Enterprises must disclose publicly a summary of the stress test results for the severely adverse scenario not earlier than August 1 and not later than August 15 of each year. Each Bank must disclose publicly a summary of the stress test results for the severely adverse scenario not earlier than November 15 and not later than November 30 of each year. The summary may be published on the regulated entity's Web site or in any other form that is reasonably accessible to the public;

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Melvin L. Watt,
Director, Federal Housing Finance Agency.

__November 11, 2015.__
Date

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